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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,232	07/14/2000	Tadeusz J. Drwiega	91436-255	5380
22463	7590	12/23/2003	EXAMINER	
SMART AND BIGGAR 438 UNIVERSITY AVENUE SUITE 1500 BOX 111 TORONTO, ON M5G2K8 CANADA			NGUYEN, VAN KIM T	
			ART UNIT	PAPER NUMBER
			2661	
			DATE MAILED: 12/23/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/617,232

Applicant(s)

DRWIEGA ET AL.

Examiner

Van Kim T. Nguyen

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 9, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

This Office Action is responsive to communications filed on October 9, 2003.

Election/Restrictions

Applicant's election without traverse of Group I claims comprising claims 1 to 13 and 15 to 19 in Paper No. 5 is acknowledged.

Claim 14 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 19 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim recites *a data structure*, which is not a process, machine, manufacture, or composition matter, or any new and useful improvement thereof.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 2661

Claims 1-3, 5, 11-13, and 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Yin et al (US 6,353,616).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 3, 5 and 15- 18, as shown in Figs. 1-8, Yin discloses a method for changing a reserved capacity for a given tunnel comprising: receiving an indication of traffic demand (steps 32, 34, 54, 70, 84, 100; col. 5: lines 17-22, and 56-60) for a tunnel through a network; based on the received indication, determining an estimated total capacity requirement (step 56, 36, 42, 48; col. 5: lines 60-62); comparing the estimated total capacity requirement to the reserved capacity (steps 38, 44, 50, 58, 60, 72, 86, 102; col. 5: line 66 – col. 6: line 12); and where the estimated total capacity requirement exceeds the reserved capacity, requesting an increase of the reserved capacity (steps 74, 88, 104; col. 8: lines 28-31).

Regarding claim 2, Yin also discloses when the reserved capacity exceeds the estimated total capacity requirement, requesting a decrease to the reserved capacity (col. 8: lines 63-64).

Regarding claim 11, Yin also discloses the indication of traffic demand comprises receiving an indication of tunnel capacity in use by serviced requests (steps 38, 44, 50, 56, 58, 72, 86, 102); and receiving an indication of tunnel capacity refused admission to the tunnel (steps 40, 46, 52, 64, 78, 92, 108).

Art Unit: 2661

Regarding claim 12, Yin also discloses the increase of the reserved capacity comprises a difference between the reserved capacity and the estimated total capacity requirement (col. 8: lines 32-41).

Regarding claim 13, Yin also discloses the increase of reserved capacity comprises a difference between the reserved capacity and a sum of the estimated total capacity requirement and a buffer value (col. 9: line 62 – col. 10: line 36).

Allowable Subject Matter

Claims 4 and 6-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

Claims are considered allowable when reading the claims none of the references of record alone or in combination, in light of the specification, disclose or suggest the combination limitations specified in the independent claims including determining a plurality of paths through the network from the source node to the destination node, each of the path has an associated available capacity, where the estimated total capacity requirement exceeds the associated available capacity of each of the plurality of paths; determining a limiting link in the current path, where the limiting link has a minimum available capacity among links in the current path; and communicating with a lower level network to request an increase of available capacity on the limiting link.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

Art Unit: 2661

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Ash et al (US 6,590,867); Rochberger et al (US 6,577,653); Golden et al (US 6,563,793); Henrion et al (US 6,469,982); Yin et al (US 6,442,138); Beshai et al (US 6,404,735); Guerin et al (US 6,377,546); Elwalid et al (US 6,353,616); Packer (US 6,285,658); Fendick et al (US 6,252,857); Fichou et al (US 6,118,791); Berhaud et al (US 6,011,776); Iwata (US 5,933,425); - all disclose method and system for flow control.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Van Kim T. Nguyen whose telephone number is 703-305-7692. The examiner can normally be reached on 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas W. Olms can be reached on 703-305-4703. The fax phone number for the organization where this application or proceeding is assigned is 703- 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.

vkn



DOUGLAS OLMS
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